2014
Opinions of the Attorney General
Open Records

The following are brief summaries of Open Records Decisions made by the Office of the Kentucky Attorney General. Decisions that are appealed to the Kentucky courts are captured in the regular case law summaries provided by this agency. Unless appealed, these Decisions carry the force of law in Kentucky and are binding on public agencies. A copy of the applicable Kentucky Revised Statutes can be found at the end of the summary.

For a full copy of any of the opinions summarized below, please visit http://ag.ky.gov/civil/orom/.

14-ORD-005 **In re: Rachel Hill / Knott County Coroner**
Decided January 3, 2014

Hill requested a copy of the medical examiner's report and toxicology reports in a specific case. When she received no response, she contacted the coroner who acknowledged receiving the request. When she still received no response, she appealed. The Decision agreed that the failure to respond violated the ORA.

14-ORD-018 **In re: Christopher Grande / University of Louisville**
Decided January 23, 2014

Grande requested a quantity of documents from the University of Louisville via a number of individual requests. UL responded within three days to the individual requests for the most part, but simply by acknowledging the receipt, not by a substantive response, and indicated there would be a delay without giving a reason. The Decision agreed that the delay in the actual response, without an adequate specific reason, was a violation of the ORA.

14-ORD-023 **In re: Laura Hatfield / Cabinet for Health and Family Services**
Decided January 29, 2014

Hatfield requested a number of documents related to an investigation she initiated into a Cabinet Social Worker. Following what was called a thorough investigation; however, the Cabinet responded that they had no records responsive to her request. Although the Decision agreed it could not require the Cabinet to produce records it did not possess, it did express "significant misgivings" about the Cabinet's apparent failure to comply with KRS 171.640, which requires every public agency to "cause to be made and preserved records containing adequate and proper documentation . . . designed to furnish information necessary to protect the legal and financial rights of the government

and of persons directly affected by the agency's activities." However, in the face of a denial of any records, the Decision must affirm the Cabinet's denial of the records.

14-ORD-026 In re: The Banner-Republican / City of Morgantown
Decided January 30, 2014

Givens (The Banner-Republican) requested financial bid records related to a city project. The City responded that although she had looked for some information, the responder had not had the time to look through all of the possible locations due to the end of the year business, and promised a response by January 8, 2015 (almost a full month from the date of the request). (She also detailed medical, personal, vacation and holiday absences as excuses for delay.) The requestor appealed, arguing that the reasons given were not in line with the ORA. The Decision agreed the response was deficient and that the reasons given were not sufficient, even if responding to a request would prove a challenge. Although it acknowledged that a reasonable extension of time might have been appropriate, it was incumbent on the government entity to understand that providing timely access to records is as much of its duty as any other essential function of the agency.

14-ORD-027 In re: Keith Dickerson / Commonwealth's Attorney's Office – 30th Judicial Circuit.
Decided February 4, 2014

Dickerson requested records from the Commonwealth's Attorney's Office. The request was decided on the basis of KRS 61.878(1)(h), as information it compiled pursuant to criminal investigations or litigation. The Decision agreed that statute protects investigative documents held by the Commonwealth Attorney's Office in perpetuity. As such, a denial was proper.

14-ORD-028 In re: Leslie Lawson / Kentucky State Police
Decided February 5, 2014

Lawson requested an investigative report and other documents related to a specific individual. KSP responded, indicating that some of the documents (such as NCIC data transmissions) were being withheld pursuant to KRS 17.150(4) and KRS 61.878(1)(l), which exempted "centralized criminal history records." The Decision agreed the denial was proper.

14-ORD-034 In re: Tom Stone / Louisville Metro Police Department
Decided February 18, 2014

Stone requested a number of documents from the Louisville Metro Police Department (LMPD). LMPD responded with a number of responsive records, but responded that was not the records custodian for some of the items which were requested, such as records held by the Attorney General. However, the Decision noted, some of the items requested did not appear to be on the Louisville Metro Records Retention Schedule and

as such were unscheduled. Further, there is no exception in the statute to permit an agency to deny access to records they hold, simply because another agency may hold them as well. The Decision noted that "statutorily recognized interrelationship between records management and records access" was critical, and an issue existed where there was a suggestion that responsive records were destroyed. The "Loss or destruction of a public record creates a *rebuttable* presumption of records mismanagement." The failure to produce the records indicated there was a records retention issue and referred the matter to the KDLA for further study.

14-ORD-035 In re: James Danner / Boyd County Detention Center
Decided February 18, 2014

Danner requested records from the Boyd County Detention Center. When he received no response he appealed. The Center responded to the appeal, indicating that the records would have been destroyed with the exception of a single document, which it produced. The Decision agreed that its initial failure to respond was a violation.

14-ORD-036 In re: Lawrence Trageser / City of Taylorsville
Decided February 18, 2014

Trageser requested records from the police department and the city clerk, relating to the personnel file of a police officer. The request was referred to the City Attorney, and it was indicated that individual would have a reply within 3 days (9 days following the initial request). Trageser appealed, and the city attorney indicated that in fact, the response was ready several days earlier than anticipated. The Decision agreed that the response was in fact, timely, and included the records actually being mailed in anticipation of future payment, that the failure to explain certain redactions in the record was a procedural violation.

14-ORD-038 In re: Lawrence Trageser / City of Taylorsville
Decided February 18, 2014

Trageser requested police records regarding a domestic abuse incident, and was denied. The Decision indicated that the city's response was likely timely (given confusion over the date of the request) but when it responded, it denied the JC-3 form requested under KRS 620.050, which indicated such forms are confidential. However, the statute reflected child abuse – not a spousal abuse situation as was the case. As such, the Decision agreed that the report was not exempt under the claimed statutory exception.

14-ORD-039 In re: Thomas Stone / Louisville Metro Police Department
Decided February 24, 2014

Stone requested a number of records from the LMPD. The response indicated that it would include "potentially thousands of records, stored in different locations, and in multiple formats and forms that would need to be located and searched." It suggested

that it would take some weeks to respond. One part of his multi-part request, in addition, would entail dozens of reports produced on each day of the time frame requested (over a five-month period) and that each would need to be retrieved and manually reviewed for possible exemptions. With respect to the personnel records of one employee that was requested, some documents were produced, but others were held back pursuant to the personal privacy provisions of KRS 61.897(1)(a). A few weeks later, LMPD responded that approximately 5-6000 records had been identified and that 1,500 were available for review. He amended his request at that time to strikingly limit his request, to which he was told there were 180 emails, but that some records were redacted. He appealed. The Decision reviewed recent cases and applied such to the facts, and noted that the response did not make it clear if in fact, records that would appear to be straightforward, such as employment applications and training records were identified and supplied. The Decision agreed that Stone was entitled to a ""a statement of the specific exception authorizing the withholding" of any record he requested that was withheld and explain "how the exception applies to the record[s] withheld" with sufficient information to permit him to dispute the claimed exemptions."

Further, the Decision noted that the decision as to whether to review records prior to copying was to the requestor and that in some cases, despite the fact that he'd indicated he wished to review records, he was billed for copies he did not specifically request. Finally, the Decision noted that the agency responded to each request with a note that additional time would be needed, and in some cases, that appeared appropriate – not all of the requests appeared to have required additional time. Documents related to a specific complaint or employment records of a named individual, for example, were simple enough and should not have been delayed while the agency sought email records.

Finally, the Decision noted that although requests for the incident reports would certainly be voluminous, the agency did not give anything beyond an estimate of the number of records possibly involved. As such, the agency did not provide a "sufficiently clear and convincing evidence of an unreasonable burden." The situation was referred back to the agency for additional information to justify its actions.

14-ORD-041 In re: Darrell Metcalfe / City of Blue Ridge Manor
Decided February 25, 2014

Metcalfe requested a number of documents from BRM. He received no response and appealed. The Decision noted that although the City Attorney took responsibility for the failure to at least send a response letter, after acknowledging that the city did receive the request, that the failure to in fact provide responsive documents within three days, with no explanation as to the reason was a substantive and procedural violation. (IN fact, it also noted that much of what was requested was for information, not for documents, which is not a proper request under the ORA.)

14-ORD-042 Lawrence Trageser / City of Taylorsville Police Department
Decided February 25, 2014

Trageser requested the TPD's Standard Operating Procedures. The City responded that there were no responsive records as any documents it possessed would fall under KRS 61.878(1)(i) and (j), as preliminary documents. Trageser argued that such documents must exist, to which the City responded that there is a draft that had yet to be presented for approval to the City Commission. The Decision noted that it was unlikely that the TPD had no written policies, particularly since some were legally required.[1] Trageser noted that the chief is permitted to enact SOPs without approval by the City Commission. The Decision noted that a position description (where the above language is found) is not law, and having insufficient information as to whether such documents occurred, the Decision noted that a violation of the ORA has occurred only to the extent that existing final documents were denied.

14-ORD-044 In re: Tom Stone / Louisville Metro Police Department
Decided February 28, 2014

Stone made a request to LMPD that would result in a vast number of responsive emails. LMPD's response indicated it would take up to 21 days to fulfill the response, because of the need to review and if necessary, redact information. It was later noted that in excess of 8,600 emails would need to be assessed, which would take up to 430 hours of staff time, and requested that Stone clarify and narrow the request. Stone appealed. The Decision reflected on previous situations which involved a request with voluminous emails, noting that the AG had "emphasized the importance of proper records management practices, including proper destruction of records." It noted that Stone's request was not "impermissibly broad or 'vague,'" as it named a specific employee and time frame, but due to the volume, a delay would be appropriate. However, to determine that a request posed an unreasonable burden required clear and convincing evidence, which was not the case, and LMPD could not deny or indefinitely postpone access to the requested records.

14-ORD- 045 In re: Jonathan Walker / Department of Corrections , Division of Probation and Parole
Decided March 5, 2014

Walker requested lab results on urine samples taken from him by Probation and Parole. He was denied under KRS 439.510, which exempts all information obtained by P&P in performance of their duty. He appealed and a further response indicated that in fact, no lab report existed, as the sample provided was insufficient. The Decision agreed that if no record existed, it could not be produced, however, in as much as initially, P&P failed to affirmatively state that no responsive document existed, its response was in

[1] For example, KRS 15A.195(4)(a) requires every local law enforcement agency participating in the Kentucky Law Enforcement Foundation Program ("KLEFP") fund under KRS 15.420 to "implement a policy banning the practice of racial profiling."

violation, as it suggested that no search was ever made for the document. (It also noted that although normally, under Open Records, a document in which an individual is named cannot be withheld from that individual, the quoted statute would override that.)

14-ORD-046 In re: Harold Jones / Christian County Jail
Decided March 5, 2014

Jones requested a document from the jail, and received no response. He appealed. The jail responded that the document was provided to Jones two days before he made the request. The Decision noted that the jail violated the ORA by first, not responding to his request and second, by failing to provide him the document. Simply because a document had been provided earlier is not a basis for not providing it again.

14-ORD-047 In re: Lawrence Trageser / City of Taylorsville
Decided March 5, 2014

Trageser requested personnel files for five named Taylorsville police officers. The response indicated it would take several additional days to allow for reviewing and redactions as appropriate, but cited no KRS in support of the delay. Trageser appealed. The Decision agreed that there was a procedural violation because the response was not made within three days, and did not cite specifically why the record was not immediately available. The Decision noted that the "need to redact records"… "is an ordinary part of fulfilling an open records request" – not something extraordinary that would usually require more time.

14-ORD-049 In re: Elaine Matthews / Breckinridge County Sheriff's Office
Decided March 7, 2014

Matthews requested records relating to a particular incident, including incoming and outgoing calls from 911 and law enforcement agencies. Both the Sheriff and 911 Coordinator responded, but both denied having any telephone recordings responsive to the request, as the recording system was inoperable during that time. Matthews appealed. The Decision agreed that the Sheriff's Office could not produce a record it did not have and provided a credible reason why it did not, and also provided documentation as to the service request. Further, the Sheriff had sought documentation and explained to the requestor that the incident actually occurred in Meade County, so any calls concerning it would have simply been rerouted to that dispatch center. Further, he offered an explanation as to why a Breckinridge County dispatcher was heard on a recording Matthews had been provided, which was that Meade would have begun recording as soon as the transfer went through, even before that agency actually answered the call. As to discrepancy as to why no log existed for the dispatch of an Irvington officer, he offered the plausible explanation that the dispatcher believed that Meade was responsible for the call. The Decision agreed the disposition of the request was proper.

14-ORD-050 In re: Debbie Enneking / City of Covington
Decided March 7, 2014

Enneking requested emails between a particular private individual and all city employees. Additional requests made several days later were for email between herself and other named individual that referenced "One Covington" and emails to named individuals that referenced "1st Friday Gallery Hop" or "Gallery Hop." The City did not respond to the first request because it was sent by email, and the Decision agreed that the ORA did not require a response to such (although it would certainly be permitted and agencies are encouraged to, if they choose not to respond, to at least advise the requestor that the request must be made by hand delivery, U.S. mail or facsimile). The latter two were sent by certified mail and the City responded, stated that some email messages requested were no longer available due to age, as routine correspondence would be destroyed after two years pursuant to the KDLA records retention schedule. As to messages sent from non-city employees, the City would not have such records. The Decision agreed that destroying records pursuant to the retention schedule, if not already requested or done to avoid release, was proper. As to those still in existence, the City had indicated the request would take additional time (approximately three weeks), and she was so notified that 738 pages had been located. In fact, some earlier emails were in fact, available, as those named individuals were still city employees, and had not been deleted in the time frame. Three accounts had been deleted because the individual was no longer with the City, however. The Decision found Covington had responded appropriately to the request.

14-ORD-051 In re: Kentucky New Era / Christian County Board of Education
Decided March 13, 2014

Camberst (Kentucky New Era) requested correspondence between the school district and a federal agency. When received, the school board attorney responded to the effect that with the schools closed, he had not been able to speak to everyone who might have responsive records. Immediately, the New Era appealed, noting that although there had been school closings, the central office had been open and conducting business. The attorney responded to the appeal with more detailed information about specific closings due to the weather, and noted that the CCBE had a skeleton crew working during that time, handling weather related emergencies and that others were out due to illness. The Decision agreed that the circumstances indicated that the delay (of three days) was proper under the circumstances but agreed that a more detailed explanation may have been advisable. (Further, it noted that KRS 61.872(5), the records were arguably not available "to the extent that the persons who had knowledge of the records were available.")

14-ORD-057 In re: The State Journal / Franklin County Fiscal Court
Decided March 24, 2014

Quinn (The State Journal) requested records that had been removed from "certain employees' personnel files." When he received the initial response, he did not object to

the omission and redaction of certain documents from the files. Later, however, it was learned that one of the employees had been allowed to remove items from her file before it was released to him, which was not denied. He made a second request for the removed items and was denied on various exemptions, in particular personal privacy, and, of course, the items that were removed were no longer in the county's possession. It was explained that some of the removed documents at least, were "not appropriate for a personnel file." The Decision agreed that was probably the case, but, "once a request is made for those files, the contents of the files must be dealt with as they existed when the request was received." Removing items in the face of a pending appeal was improper and the matter was referred to KDLA for further investigation.

14-ORD-059 In re: Mark Shouse / Nelson County Clerk
Decided March 26, 2014

Shouse requested information concerning computer maintained records of the county. When he received no response, he appealed. The County responded that the request was for information, rather than extant records, which was not a proper ORA request. The Decision agreed that such "Requests for information are outside the scope of open records law and an agency is not obligated to honor a request for information under the law." The Decision found no fault in the failure to respond.

14-ORD-067 In re: Chris Henson / Covington Police Service
Decided April 10, 2014

Henson requested offense reports from 20 addresses over a three year period and requested that they be mailed to his home (in Covington) – claiming a business address outside the county. The records custodian, apparently overlooking that his business address (not provided) was outside the county, responded that he could review the items in person and have them copied. In addition, it was noted he had failed to pay for two earlier requests. Henson appealed, arguing he was entitled to have the documents mailed. Covington agreed to mail the records upon receiving the appeal, but doubted that he did, in fact, have a business address outside the county. Because the initial response was not mailed within three days, the Decision agreed there was a procedural violation, but agreed that the withholding of a juvenile report was proper under KRS 610.320(3). Further, the Decision agreed that it was proper to require payment for both the current request and the two earlier ones, and that a complaint that the mailing was not timely simply suggested the check and the response crossed in the mail. Further, it agreed that certain information redacted was also proper, under the personal privacy provisions of KRS 61.878(1)(a).

14-ORD-068 In re: Glenn R. Davis / Erlanger Police Department
Decided April 10, 2014

Davis requested the collision report and any incident report for a particular wreck in which he was a party. He was directed to either purchase the report from an online website (through KSP) or send $15 and a self-addressed envelope – an invoice was

included for that purpose. However, it further noted that it could find no report under his name in the system. He appealed. The Decision referenced KRS 189.635 which indicates that such reports are not subject to open records, but should be made available only to parties and other named individuals. However, since he was a party, he was entitled to the report. The cost, however, it agreed, was excessive, as the statute allows for the few of $5 for paper copies and $10 through the KSP website. As there was no indication that reproducing the report would cost more than $10, a $15 fee was excessive. Finally, however, as the agency indicated it had no responsive report, it could not be required to produce something it did not have.

14-ORD-069 In re: Elaine Matthews / Meade County Attorney
Decided April 10, 2014

Matthews requested a copy of a CD provided to the Meade County Attorney by a deputy sheriff, which included information from video seized from a camera during an incident. The Meade County Attorney denied the CD as a record pertaining to a criminal investigation under KRS 61.878(1)(h). As a record that is part of a litigation file held by that office, it was permanently exempt. As such, the denial was proper.

14-ORD-078 In re: Todd Bonds / Walton Verona Independent Schools
Decided April 16, 2014

Bonds made a request the resulted in a vast number of responsive emails. He was told that the cost would be in excess of $1,600, although almost all of the information was contained on a single disc. A minimal number of items were to be produced in hard copy, for a cost of less than $10. Bonds appealed. The Decision noted that the emails copied to the disc had neither been reviewed nor reproduced in hard copy, the response was that the emails would be copied and redactions made once payment was made. It was acknowledged that many of the emails were not responsive to the request and that attachments may be part of the total as well. The Decision noted that the response and excessive fees subverted the ORA, and noted that the only proper fee was copying the emails to a disc, which he was willing to accept, and that was what the school district was required to produce.

14-ORD-081 In re: Debbie Enneking / City of Covington
Decided April 21, 2014

Enneking requested copies of various email records, from specified former and current city employees and for a designated time frame (2006-2013). 353 pages were provided, and the remainder were denied, primarily pursuant to routine correspondence destruction. Enneking argued that one of the individuals named was still an employee and thus, his records should still be available. The City explained that when it requested his records (he had left in the interim) it was learned that the IT contractor had deleted his entire record – a problem it had since remedied. (A few emails were recovered and produced, however.) The Decision agreed that it could not force the

City to produce what it does not have, but did refer the matter to the KDLA for followup on the issue of deleting emails prior to the date indicated in the destruction schedule.

14-ORD-082 In re: Cindy A. Preston / Justice and Public Safety Cabinet
Decided April 22, 2014

Preston requested radiology reports and films from a specific autopsy. The Medical Examiner denied both under KRS 61.878(1)(a) – although it later acknowledged no report was generated. Preston appealed, arguing that the decedent had no privacy rights. Although, in some cases, the Decision agreed, autopsy photos might be denied, in the case of an X-ray, which is more clinical and relatively anonymous, the public had an interest in the record. As such, the Decision ruled that the ORA was violated by the denial.

14-ORD-085 In re: Racquel Hatfield / Kentucky State Police
Decided April 22, 2014

Hatfield requested laboratory / DNA records related to a specific individual. KSP denied, based on KRS 17.175(4), which gave broad confidentiality to such records. The Decision agreed that DNA records are not public records and the denial was proper.

14-ORD-087 In re: Lawrence Trageser / City of Taylorsville
Decided April 25, 2014

Trageser requested the personal (personnel) file for a named police officer. The request was referred to the city attorney for review, but the agency, in fact, provided the records the next day. The decision noted that the final disposition of his request was, in fact, not made within the three day time frame, and there was no indication the file was "in active use, in storage or not otherwise available" – the reason for the delay was given that it "had to be reviewed and redacted." Since that is an "ordinary part of fulfilling an open records request," doing so does not as a rule justify any additional delay. As such, it agreed the City of Taylorsville was in violation of the ORA by its response.

14-ORD-090 In re: Racquel Hatfield / Justice and Public Safety Cabinet
Decided May 1, 2014

Hatfield requested a number of documents from the Medical Examiner regarding a particular autopsy. The ME denied the existence of some records and denied others under KRS 61.878(1)(a), the personal privacy provisions, but did release some documents. Hatfield appealed and the Decision agreed that "a deceased person has no personal privacy rights and the personal privacy rights of living individuals do not reach to matters concerning deceased relatives." Although it acknowledged that in some circumstances, the family might exert a privacy interest, there was no indication they had done so in this case. (However, it noted that while it would consider a family's objection to release, that it was not controlling.) As such, the Decision noted that "In the absence of a *substantiated* privacy interest, that is a privacy interest supported by

clearly expressed familial opposition to disclosure coupled with circumstances corroborating a heightened privacy interest, we are foreclosed from ignoring thirty-three years of precedent." The Decision noted that the ME could not place the burden on the requestor to seek permission from the family, and as such, by its denial, violated the ORA.

14-ORD-103 In re: Kenny Goben / Louisville Metro Police Department
Decided May 13, 2014

Goben requested information from LMPD and received no reply. He appealed. The Decision agreed that the request was not for records, but for information, and that to not reply was not a violation of the ORA. (In fact, however, LMPD indicated that it did attempt to answer his question, however.)

14-ORD-110 In re: Lawrence Trageser / Spencer County Sheriff's Department
Decided May 23, 2014

Trageser requested records from the Sheriff's Department. Although the Sheriff was indicated as the Official Custodian, the posted rules and regulations required that requests be made instead to the Spencer County Attorney. (This appeared to be required for all county agencies.) Although certainly the County Attorney could be designated as the Official Custodian, that was not the case, and as such, the Decision agreed it was a violation to require requests to be made to someone other than the official custodian.

14-ORD-111 In re: Pat Thurman / Louisville Metro Office of Management and Budget
Decided May 28, 2014

Thurman requested visitor sign in records for three security entrances to a Metro-owned building for a single month. She received those for one date (the last day of the month) but was denied the remainder, as the sign-in sheets were destroyed after a week. She appealed. Metro argued that it could not produce what it did not have, but failed to cite any records series under which the logs were classified. Agreeing that it could not produce them, of course, it also noted that the possible premature destruction of records raised records management issues. The appeal could not identify any applicable records series, the closest one identified did not seem to encompass the records being sought. Similar type records (sign-in/out logs) had a much longer retention schedule. In the middle of the month in question, the Archives and Records Commission established a record series (L6664) for such documents and required they be retained for 30 days. As such, prior to the date the schedule was established, the records should have been held as "unscheduled" and following that date, they should have been retained 30 days. As such, the matter was referred to the KDLA.

14-ORD-124 In re: James Sisk and Alan Rash / City of Mortons Gap
Decided June 20, 2014

Sisk and Rash requested similar items. Sisk requested reports to be printed from the GPS device installed in the city's police car, while Rash requested travel detail that could be printed from the device. Both specified time frames. Rash also requested the ability to view and print the "GPS Tracking History / Historical Tracking details" during an approximately six-month time frame. The City provided the reports but could not allow a viewing of the actual track, as it would allow the user "to access the latitude and longitude of each stop, and to create a screen shot of each stop's coordinates." (The opinion was unclear, however, as it further noted that such data did not exist in a printable form.) In addition, the city had responded to Sisk noting that because of an office move, the internet and the GPS tracking program could not be accessed for a time frame of about nine days. Finally, the City noted that the software was installed on a particular computer that was needed by the city employee, and thus a citizen could not have unfettered access to the computer. Rash argued that the reports did not provide specific information on stops, but only general locations, and that the data was available through the tracking program. Although ultimately, the Decision found that the requested computer information was not a public record, it noted, however, that there remained an issue of whether an individual may inspect public records via a government computer, under KRS 61.872." It noted that prior case law and indicated that it was permissible to offer, as an alternative, printed out hard copies for review. However, upon further review, the City noted that the report requested could not be supported by the standard reporting functions of the software. Further it noted that the city's failure to respond in a timely manner – even prior to the relocation, was a violation of the ORA. (The request was made several weeks prior to the scheduled relocation.) Upon discussion with the vendor, the OAG confirmed that what was requested was not able to be printed in a report, and is covered by a license agreement – and a public record of the information was not provided for in the contract. Although noting that it is rarely the case that "records maintained electronically cannot be loaded onto a disc for purposes of inspection and/or copying," this was in fact, the "rare exception to the general rule." As such, the city not violate the ORA by refusing access to the onscreen representation of the actual track of the vehicle.

14-ORD-137 In re: David Hull / Kentucky State Police
Decided July 3, 2014

Hull (on behalf of Devore) requested complaints, disciplinary actions and warnings related to a specific trooper. She had previously submitted two complaints against that trooper. KSP denied the request, indicating no records were found. She also requested information about leaves of absence and medical conditions, which was initially overlooked by the agency, but was ultimately denied due to privacy concerns. She appealed, noting that she had in fact filed complaints, which should have been found in a search. KSP responded that complaints may not have been classified as such if the action did not constitute a policy violation, instead such complaints become correspondence which was not searched pursuant to the request. The Decision noted

that the agency's reading of the request was too narrow and that they should have conducted a search in correspondence as well.

14-ORD-139 In re: Mark A. Wohlander / Lexington Fayette Urban County Government
Decided July 8, 2014

Wohlander requested certain 911 records relating from a specific area on a three specific dates. He followed up to clarify that he was not requesting ALI data. He was notified that because the records are not centrally located, it may take additional time to fulfill. The next day, he was informed that the records related to an open murder investigation and that it would be handled by the Lexington Division of Police. Hull sent a detailed appeal, explaining his purpose for the request which related to the proper functioning of 911 with respect to the incident. A substantive response to the appeal from the assigned officer indicating that he was providing the dispatch log and the dispatch audio, but not the recordings or transcripts of the 911 calls, claiming that they are exempt under 65.752(4) – the ALI information – and KRS 67.878(1)(a), (h) and (l). The Decision agreed that in City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842 (Ky. 2013), which made law enforcement agency records not categorically exempt from disclosure. Inside, it may only be invoked "when the agency can articulate a factual basis for applying it, only, that is, when because of the record's content, its release poses a *concrete risk of harm* to the agency in the prospective action." In this case, the criminal matter had not yet gone to trial and the articulated concern was the release of evidence might taint the jury pool and cause "commentary of the evidence." The agency also expressed concern that the witnesses might be contacted by the media or others. In this matter, the Decision agreed, there was an adequate showing of potential harm with the release.

14-ORD-144 In re: Loy Crawford / City of West Buechel
Decided July 14, 2014

Crawford requested city employee payroll records for a five month period. Mayor Fowler indicated she would decide whether the records would have to be reviewed on site or copies provided as the information was private, although no citation was provided to that effect. Crawford (who is on the City Council) appealed, and the Decision agreed that it was proper to require him to review the records on site, but stated that he could not be denied copies if he so desired. Further, the City violated the ORA by failing to identify information it considered private and the "legal basis for withholding it.

14-ORD-145 In re: Elaine Matthews / Meade County Sheriff's Department
Decided July 16, 2014

Matthews requested "an intact, complete, true copy" of a CD made by a deputy, which would contain still images and video he shot during her 911 call. She also required information about the handling of the storage card and the chain of custody on it. The Sheriff's Office sent her a CD but denied having any information on the storage card.

She appealed, noting there was a discrepancy in the length of the video she'd received as compared to the copy she received from the Meade County Attorney. They denied having any knowledge on the handling or whereabouts of the original video card. The Decision noted that information requests are outside the purview of the ORA and since they denied having any responsive documentation, they had discharged their duty under it.

14-ORD-148 In re: Tad Thomas / Lyon County Fiscal Court
Decided July 21, 2014

Thomas requested documents (emails) from Lyon County, and expressed a preference for electronic rather than paper copies. Lyon County responded that the documents did not exist in electronic form and stated a fee of ten cents per page. He appealed. At that point, Lyon County advised that it did not provide email for its employees and that those that used email, did so on their own. It apparently copied some 20,000 emails that that would be responsive. The Decision noted that the minimum standard for electronic documents was in ASCII and that despite the challenges, they would have to produce it in an acceptable electronic format.

NOTE: *In a footnote, the Decision recognized the fiscal issues in providing email, but emphasized that the "practice raises significant records management and retention issues." It provided several alternatives that would allow the agency to be in compliance with the necessity to properly maintain records.*

14-ORD-153 In re: Todd Bonds / Board of Education of Spencer County
Decided July 24, 2014

Bonds requested a number of records, roughly divided into four categories, emails between a stated school employee and himself, emails between two different school domains, a request as to money paid to an attorney and emails in which his name would be in the subject or body. He was denied and appealed. The school system indicated that one of the email addresses he provided in the first request did not exist, so of course, no emails existed. With respect to the second, it was identical to an earlier request and was, despite the school system's claim to the contrary, sufficiently precise as to be proper. In the earlier request, the OAG had agreed the agency satisfied it's burden of proof (clear and convincing) that the request, which totaled more than 6,200 responsive emails that would then have to be reviewed by multiple employees to identify required redactions under federal and state law, was unduly burdensome. However, in this case, the school system's response did not indicate that they had attempted to identify responsive records, but only what was anticipated to be located. The Decision noted that "A public agency has the duty "to make a good faith effort to conduct a search using methods which can reasonably be expected to produce the records requested[.] Thus, the agency must expend reasonable effort to identify and locate the requested records." The request for the amount paid to the attorney was a request for information, not a document request, and was properly denied. Finally, the last request was sufficiently described and while they may be encompassed

in the other request, was still properly framed. The Decision agreed the denial violated, in part, the ORA.

14-ORD-154 In re: Meggan Smith / Lakeside Park-Crestview Hills Police Authority
Decided July 25, 2014

Smith requested certain documents related to a particular case, including investigative files, inventory and chain of custody documentation and electronic records. The LPCH PD denied the request, citing 61.878(1)(h). She argued that Skaggs v. Redford, 844 S.W.2d 389 (Ky. 1992)) was overturned in relevant part by City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842 (Ky. 2013). The latter case had ruled that "investigative files of law enforcement agencies are not categorically exempt from disclosure." Instead, the ""the law enforcement exemption is appropriately invoked only when the agency can articulate a factual basis for applying it, only, that is, when because of the record's content, its release poses a concrete risk of harm to the agency in the prospective action." As such, the agency should provide the requestor with sufficient information on the nature of the record being withheld so that it can be disputed if appropriate. In response, the City asserted that disclosure would jeopardize the prosecution by revealing "the personal theories and work product of investigators." The Decision ruled that no showing of potential harm justified the "withholding the UOR forms and the Inventory of Evidence & Chain of Custody Sheets, under KRS 61.878(1)(h)." Since UORs are in the nature of incident reports and were normally in the court record and provided to the defense prior to trial, as were the inventory and chain of custody documentation, and the subject was at the post-trial stage. The agency also argued that it had turned over the file to the prosecution, although it admitted it retained a copy, and the Decision noted that it had "previously held that a public agency cannot disclaim responsibility for public access to its own records by entrusting them to the possession of a third party."

However, the records were properly withheld upon an invocation of KRS 17.150, which did not have a "harm" requirement. As such, since there was an ongoing law enforcement action, they were properly denied.

14-ORD-155 In re: Mark Wilson / Gallatin County Sheriff
Decided July 31, 2014

Wilson hand-delivered a records request to the Sheriff's office and was advised, five days later, that the records would be disclosed when a named deputy sheriff returned from vacation. However, he received no further response. Because of that, the Sheriff's Office committed a violation of the ORA, having provided him no response within three days.

14-ORD-161 In re: Micheal Whitehead / Louisville Metro Department of Corrections
Decided August 6, 2014

Whitehead requested records from the LM DOC regarding his time at their facility. He claimed to have sent two requests, which the DOC denied having received. He appealed. The DOC denied having received the communications but immediately issued a response to his requests. The DOC indicated that one item (log books for inmate visits) were destroyed after two years, although no records retention schedule was cited. Finding the only equivalent item to have a destruction schedule of 30 days, the Decision agreed that a denial was proper. Another request for specific incoming inmate male, was cited as being kept in-house for three years and then sent to archives, but that was considered an insufficient response. There is no right of denial simply because the record is in archives, instead, the item should be retrieved and provided. Other records were properly denied as having been destroyed in a timely manner, before the request was made. Finally, it was proper to require him to sign a specific release for his medical records.

14-ORD-166 In re: James T. Clemons / Lexington-Fayette Urban County Government Division of Police
Decided August 11, 2014

Clemons requested DNA testing results (on himself) in a murder case. Lexington responded that there was no such record. Clemons appealed, but the Decision agreed that it could not produce something it did not have.

14-ORD-168 In re: Jack C. Duvall, Jr. / Kentucky State Police
Decided August 12, 2014

Duvall requested the dashcam video and any other documents relating to a Calloway County DUI arrest. (That individual had since filed a lawsuit against a client of Duvall.) He was provided with several items but denied the video pursuant to KRS 189A.100(2) and KRS 61.878(1)(l). The Decision, however, upheld the denial as the statute does not allow the release.

14-ORD-171 In re: Craig Stone / Kentucky Community and Technical College System
Decided August 14, 2014

Stone requested a copy of the KCTCS open records request policy, which was promptly mailed at no cost. He then received copies of training hour records for two individuals. He received the first at no charge, but was charged .10 a page for the second, with a postage cost if they were to be mailed. He noted that nowhere in the policy does it give an indication of when someone might be charged or not. In response, KCTCS noted that the language was permissive. The Decision agreed that it was improper to not include the fee in the policy and that selective enforcement was improper as well.

However, it held that they retained the discretion to choose not to charge for a minimal number of copies.

14-ORD-172 In re: Craig Stone / City of Bloomfield
Decided August 14, 2014

Stone complained that the city of Bloomfield did not properly post the required ORA policy in a prominent location and that there was no indication when its public building was in fact open, that it was not clearly found in the city's main website screen and that it does not provide a fax number although it will apparently accept faxed requests. A form provided by the city also indicated a list of usages of data. The Decision noted that prominent had to be defined with the common usage of the term, and that it may not necessarily mean conspicuous or available 24-hours a day or on the outside of its building. Further, there was no requirement that a fax number be provided, even though the agency was willing to accept requests by fax. The Decision did agree that the form's statement that records collected by the city would be considered confidential.

14-ORD-178 In re: Charles Do Oppenheimer / Kentucky State Police
Decided August 26, 2014

Oppenheimer requested records regarding a specific investigation. He received a response that the records were in storage and would be available within a month. He appealed and the OAT was advised that the records were released (approximately 2 weeks after the request), with minimal redactions. The decision agreed that the response could have been more detailed, to explain the delay, but that the delay was reasonable. It further agreed that the redactions (which include birthdates and other sensitive numbers) were proper.

14-ORD-186 In re: James McNair / Kentucky Communication and Technical College System
Decided August 29, 2014

McNair requested personnel records for two former college presidents. Some of the documents were denied pursuant to KRS 61.878 (1)(a) as being an invasion of personal privacy, others under KRS 61.878(1)(i) and (j) as being preliminary drafts and recommendations and some as being either prohibited or confidential under KRS 61.878(1)(l) and CR 26.02(3) – work product. One of the items being held back under the personal privacy provision was an employment evaluation. The decision noted that in Cape Publications v. City of Louisville, performance evaluations ""can contain a great deal of personal information, and should not be subject to disclosure without the most pressing of public needs."[2] Finding no such need, the Decision agreed that evaluation could be denied. In addition, work product (by an attorney) is also properly denied.

[2] 191 S.W.3d 10 (Ky. App. 2006).

14-ORD-197 In re: Suzette Scheuermann / Kentucky Board of Nursing
Decided September 26, 2014

Scheuermann requested the email addresses for all licensees of the KBN. The request was denied, pursuant to KRS 61.878(1)(a), as an invasion of personal privacy. Scheuermann appealed and the Decision agreed that the private email addresses would "provide her no further meaningful information about the Board's activities," but only a "ready-made subscriber list" for her newsletter. The Decision agreed the denial was proper.

14-ORD-205 In re: James T. Clemons / Lexington Division of Police
Decided October 7, 2014

Clemons requested DNA records on any suspect investigated for any of four named murder cases. The Division gave a belated response, stating that it did not maintain most of the requested records and providing him with the information as to where it might be found. It invoked KRS 17.175(4) to withhold the single record it did hold. He appealed. Lexington responded that it had referred Clemons to the KSP Crime Lab, explaining that there were numerous tests in the cases referenced. It further noted that it did not get hard copies back, instead either accessing the KSP BEAST system or by telephone. The Decision agreed that he could not obtain information the department did not hold and that ultimately, the Department's response was sufficient.

14-ORD-211 In re: The Cincinnati Enquirer / Commonwealth's Attorney, 54th Judicial Circuit
Decided October 16, 2014

The Cincinnati Enquirer requested records from the Commonwealth Attorney concerning a specific death investigation. It was denied with an invocation of KRS 61.878(1)(h), in which records held by prosecutors are permanently exempt. The Decision agreed that the records were properly withheld.

14-ORD-228 In re: Sarah Teague / Kentucky State Police
Decided November 13, 2014

Teague requested mug shots, booking photos and any other photos of a particular individual. KSP responded that they had no responsive records. Further, it noted that any photographs would be denied under KRS 61.878(1)(h) and 17.150(2), as part of an ongoing investigation. Teague argued that they were avoiding acknowledging that they had possession of any photos. The Decision noted that KSP specifically said it had not actually searched for any photos beyond those held in mug shot files. Although the death in question occurred in 1995, KSP reiterated that it was still an open case. The Decision noted that the KSP "has not made any attempt to specify a prospective law enforcement action, nor demonstrated any harm that would result from the release of photos" of said individual. However, the invocation of KRS 17.150 did not require any showing of potential harm and as such, the denial was proper.

14-ORD-233 **In re: Michael McQueen / Laurel County Sheriff's Office**
Decided November 26, 2014

McQueen requested particular records regarding an individual who had been employed at the Sheriff's Office. He received no response and appealed. The Sheriff's Office did not respond to requests from the OAG either. As such, the OAG ordered the agency to provide McQueen with any responsive records it holds, and until it does so, it remains in violation of the ORA.

14-ORD-243 **In re: Mark Crossland / Eastern Kentucky Correctional Complex**
Decided December 9, 2014

Crossland requested copies of a grievance filed with the prison. The EKCC responded with information on the fees needed to cover the materials. He appealed and the DOC responded that it requires advance payment for such copies. The Decision agreed that was proper and consistent with the ORA.

KENTUCKY
Open Records

61.870 Definitions for KRS 61.872 to 61.884

As used in KRS 61.872 to 61.884, unless the context requires otherwise:

(1) "Public agency" means:

(a) Every state or local government officer;

(b) Every state or local government department, division, bureau, board, commission, and authority;

(c) Every state or local legislative board, commission, committee, and officer;

(d) Every county and city governing body, council, school district board, special district board, and municipal corporation;

(e) Every state or local court or judicial agency;

(f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;

(g) Any body created by state or local authority in any branch of government;

(h) Any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds;

(i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;

(j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and

(k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;

(2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;

(3) (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.

(b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;

(4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.

(b) "Commercial purpose" shall not include:

1. Publication or related use of a public record by a newspaper or periodical;
2. Use of a public record by a radio or television station in its news or other informational programs; or
3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;

(5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;

(6) "Custodian" means the official custodian or any authorized person having personal custody and control of public records;

(7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards; and

(8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device.

61.871 Policy of KRS 61.870 to 61.884; strict construction of exceptions of KRS 61.878

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.

61.8715 Legislative findings

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of KRS 11.501 to 11.517, 45.253, 171.420, 186A.040, 186A.285, and 194B.102, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.

61.872 Right to inspection; limitation

(1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any person shall have the right to inspect public records. The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.

(3) A person may inspect the public records:

(a) During the regular office hours of the public agency; or
(b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the person requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.

(4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and

location of the official custodian of the agency's public records.

(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

61.874 Abstracts, memoranda, copies; agency may prescribe fee; use of nonexempt public records for commercial purposes; online access

(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all public records not exempted by the terms of KRS 61.878. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that such duplication will not damage or alter the original records.

(2) (a) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.

(b) The minimum standard format in paper form shall be defined as not less than 8 1/2 inches x 11 inches in at least one (1) color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request.

(3) The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(4) (a) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.

(b) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee.

(c) The fee provided for in subsection (a) of this section may be based on one or both of the following:

1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records;

2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(5) It shall be unlawful for a person to obtain a copy of any part of a public record for a:

(a) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to subsection (4)(b) of this section; or

(b) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or

(c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

(6) Online access to public records in electronic form, as provided under this section, may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements. Fees shall not exceed:

(a) The cost of physical connection to the system and reasonable cost of computer time access charges; and

(b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.

61.8745 Damages recoverable by public agency for person's misuse of public records

A person who violates subsections (2) to (6) of KRS 61.874 shall be liable to the public agency from which the public records were obtained for damages in the amount of:

(1) Three (3) times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated;

(2) Costs and reasonable attorney's fees; and

(3) Any other penalty established by law.

61.876 Agency to adopt rules and regulations

(1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:

(a) The principal office of the public agency and its regular office hours;
(b) The title and address of the official custodian of the public agency's records;
(c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;
(d) The procedures to be followed in requesting public records.

(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.

(3) The Finance and Administration Cabinet may promulgate uniform rules and regulations for all state administrative agencies.

61.878 Certain public records exempted from inspection except on order of court; restriction of state employees to inspect personnel files prohibited

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:
(a) Public records containing information of a personal nature where the public disclosure

thereof would constitute a clearly unwarranted invasion of personal privacy;
(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;
(c) 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:

a. In conjunction with an application for or the administration of a loan or grant;
b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;
c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or
d. For the grant or review of a license to do business.

3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;
(e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;
(f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;
(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;
(h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;
(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;
(j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;
(k) All public records or information the disclosure of which is prohibited by federal law or regulation; and

(l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

61.880 Denial of inspection; role of Attorney General

(1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) (a) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.
(b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:
1. The need to obtain additional documentation from the agency or a copy of the records involved;
2. The need to conduct extensive research on issues of first impression; or
3. An unmanageable increase in the number of appeals received by the Attorney General.
(c) On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The Attorney General shall not, however, be named as a party in any Circuit Court actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any duty to defend his decision in Circuit Court or any subsequent proceedings.

(4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.
(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

61.882 Jurisdiction of Circuit Court in action seeking right of inspection; burden of proof; costs; attorney fees

(1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.870 to 61.884 shall not have to exhaust his remedies under KRS 61.880 before filing suit in a Circuit Court.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the court shall determine the matter de novo. In an original action or an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the burden of proof shall be on the public agency. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award the person an amount not to exceed twenty-five dollars ($25) for each day that he was denied the right to inspect or copy said public record. Attorney's fees, costs, and awards under this subsection shall be paid by the agency that the court determines is responsible for the violation.

61.884 Person's access to record relating to him

Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878.